STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BUFORD MILLER,

Defendant-Appellant.

UNPUBLISHED
May 2, 2000

No. 210249
Macomb Circuit Court
LC No. 97-000849-FH

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of breaking and entering a motor vehicle with intent to steal property, causing damage, MCL 750.356a; MSA 28.588(1). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to two to ten years' imprisonment. He appeals and we affirm.

Defendant first argues that trial counsel was ineffective for not moving to suppress evidence of glass particles and tools, which were seized from his person by the police. Limiting our review to the record, defendant has not established any basis for relief. *People v Avant*, 235 Mich App 499, 507-508; 597 NW2d 864 (1999). Contrary to what defendant argues, it is not apparent from the record that his initial encounter with the police properly should be characterized as a *Terry*[1] stop. A police officer's conduct in asking questions and requesting identification, even if done for an investigative purpose, does not necessarily transform an encounter into a seizure. See *People v Shabaz*, 424 Mich 42, 56; 378 NW2d 451 (1985); *People v Shankle*, 227 Mich App 690, 697; 577 NW2d 471 (1998). Moreover, even if the initial encounter were to be characterized as a *Terry* stop, defendant has not shown that a motion to suppress premised on this theory would have been successful, or that trial counsel's failure to make the motion otherwise detrimentally affected the outcome of the trial. *Avant, supra*; *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). Hence, ineffective assistance of counsel has not been shown.

We also reject defendant's claim that the trial court sua sponte should have suppressed the testimony of a key prosecution witness under MCL 775.7; MSA 28.1244, because the witness testified pursuant to a plea agreement affecting the disposition of other criminal charges. Defendant did not raise

this issue below and has not shown any plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

The plain purpose of MCL 775.7; MSA 28.1244 is to reimburse certain witnesses for expenses by monetary payments. Although MCL 775.7; MSA 28.1044 also states that "no fees shall be allowed or paid to witnesses . . . except as is provided in this section and act," the regulated fees that can be gleaned from MCL 775.5; MSA 28.1044 and other statutory provisions governing witness fees are monetary in nature. See e.g., MCL 775.13(1)(a); MSA 28.1250(1)(a). The purpose of the latter statute is to compensate a witness to some extent for a loss of time. *Starmont v Cummins*, 120 Mich 629; 79 NW 897 (1899); see also *Bath Charter Twp v Clinton Co*, 171 Mich App 395, 398; 429 NW2d 664 (1988).

A plea agreement, in contrast to the compensatory purpose of the monetary payments authorized by the statutory provisions governing witness "fees," serves no purpose related to a witness' time or expense for appearing in court. A plea agreement affecting the disposition of criminal charges serves the administration of justice. *People v Reagan*, 395 Mich 306, 313-314; 235 NW2d 581 (1975); *People v Jackson*, 192 Mich App 10, 15; 480 NW2d 283 (1991).

MCL 775.7; MSA 28.1244 cannot be reasonably interpreted as regulating testimony procured by a plea agreement. Also, defendant's reliance on 18 USC 201(c)(2) is misplaced, considering that this federal statute is not a "fees" statute and does not prohibit either the government or a governmental agent from entering into a plea agreement. See *United States v Singleton*, 165 F3d 1297 (CA 10, 1999).

Defendant's reliance on the witness immunity statutes, MCL 767.6; MSA 28.946 and MCL 780.701; MSA 28.1287(101), is likewise misplaced, because those statutes do not regulate plea agreements. They establish procedures by which a prosecutor may petition a court for an order of witness immunity when the witness refuses to testify in pretrial or trial proceedings based on the right against self-incrimination. See generally *People v McIntire*, 461 Mich 147; 599 NW2d 102 (1999); *People v Schmidt*, 183 Mich App 817, 24; 455 NW2d 430 (1990). Even within this statutory context, it has been recognized that a prosecutor may, as a condition for granting immunity, add additional terms beyond those imposed by statute. See *McIntire, supra* at 154.

Although not addressed by defendant, we note that the Legislature has provided a means of regulating plea agreements by requiring judicial involvement for a prosecutor to nolle prosequi charges. See MCL 769.29; MSA 28.969; *People v Grove*, 455 Mich 439, 459; 566 NW2d 547 (1997). However, the Legislature plainly did not intend for the "fees" provision in MCL 775.7; MSA 28.1044 to regulate plea agreements affecting the disposition of criminal charges or to otherwise bar a witness from testifying pursuant to a plea agreement. Hence, there is no plain error entitling defendant to any relief. *Carines, supra* at 774.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra

[1] *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).